

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:07-CR-00195-RJC

USA

v.

ALEJANDRO VILLAREAL (4)

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ORDER

THIS MATTER is before the Court upon motion of the defendant, pro se, for a correction of his sentence pursuant to Federal Rule of Criminal Procedure 35, signed on July 6, 2016. (Doc. No. 234).

On June 24, 2016, the Court reduced the defendant's sentence pursuant to retroactive amendments to the United States Sentencing Guidelines regarding drug offenses. (Doc. No. 233: Order). The defendant asserts that the Court miscalculated his new sentence by subtracting two offense levels from 43, rather than 42. (Doc. No. 234: Motion at 1). At the original sentencing hearing, the Court found the total offense level to be 43, then varied 1 level to achieve a just sentence. (Doc. No. 171: Revised Statement of Reasons; Doc. No. 190: Sent. Hr'g TR at 48-51). According to USSG §4B1.10 comment. (n.1(A)), the starting point for comparison is the offense level "determined before consideration of any departure provision in the Guidelines Manual or variance."

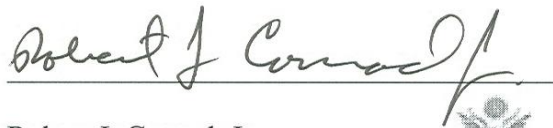
Under the current guidelines, the defendant's drug quantity of at least 150 kilograms results in an offense level of 36, his leadership enhancement adds 3 levels, and the money laundering guideline adds 2 levels, for a total of 41. USSG §§2B1.10(b)(1), 2D1.1(c)(2), 3B1.1(b), and 2S1.1(b)(2)(B). The defendant is not eligible for a further reduction from the amended guideline range of 324-405 because he did not originally benefit from giving

substantial assistance to authorities. USSG §2B1.10(b)(2) and comment. (n.3)(court limited to low end of amended range where original sentence constituted a variance). Thus, the Court properly sentenced the defendant to the low end of the amended advisory guideline range.

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 234), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and to the United States Attorney.

Signed: July 13, 2016

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge



SEALED DOCUMENT with access to Specified Parties/Defendants.